

# **EXHIBIT B**

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1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND DISTRICT

3 Case# 19-344-cr

4 -----X

5 UNITED STATES OF AMERICA

6 -against-

7 JEAN BOUSTANI,

8 Also known as "Jean Boustany",

9 Defendant.

10 -----X

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12 March 5, 2019

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22 B E F O R E :

23 HON. ROBERT D. SACK

24 HON. REENA RAGGI

25 HON. SUSAN L. CARNEY

1           That's partly I guess because things  
2           are changing. When this all started, there was  
3           the notion that you were going to wait for other  
4           co-defendants, and now, that's not the case. But  
5           --

6           MR. BINI: Well, Your Honor, it  
7           depends. For example, the Judge has said he's  
8           going to set his trial date. It's possible that  
9           other co-defendants appear here in the next few  
10          months, regardless.

11          HON. RONALD D. SACK: It's possible and  
12          you deal with it, if it happens.

13          MR. BINI: Yes.

14          HON. REENA RAGGI: That becomes  
15          relevant though to, we asked you how quickly  
16          you'd go to trial because if the Defendant is  
17          going to get his trial very quickly, that may  
18          assuage certain concerns that are viewed very  
19          differently, if he's going to be in custody for  
20          more than a year.

21          We've kept you past your time, but I  
22          want to ask you a question about your case,  
23          because the strength of the case is of course  
24          another factor that was considered here. What is  
25          the security that was fraudulently offered to

1 United States investors?

2 MR. BINI: Your Honor, the -- well, the  
3 security is the EMATUM security, which was a loan  
4 participation note. This involves two syndicated  
5 loans and in the middle, there is a syndicated  
6 loan called Proindicus and one called MAM, and in  
7 the middle is a security.

8 So the entire thing is a wire fraud,  
9 and the thing in the middle, EMATUM, was a  
10 security. It was a loan participation note that  
11 was later sold as a Euro bond.

12 HON. REENA RAGGI: Sold --

13 MR. BINI: And these were sold to US  
14 investors --

15 HON. REENA RAGGI: And what's the  
16 fraudulent statement material omission or  
17 statement that was made to these investors?

18 MR. BINI: The loan agreements for all  
19 three of these loans, because these are  
20 principally loans, indicated that the --

21 HON. REENA RAGGI: I'm interested in  
22 the security that was sold to US investors.

23 MR. BINI: Yes, Your Honor.

24 HON. REENA RAGGI: What's the false  
25 statement or the fraudulent statement?

1           MR. BINI: The false statement is the  
2 use of proceeds and the explicit violation of an  
3 anti-bribery provision that was in all these loan  
4 agreements. The loan agreements and the  
5 materials that were marketed to investors claim  
6 that this money would be used to pay for boats  
7 and projects in Mozambique.

8           And the Government's indictment sets  
9 out and its case will prove that in fact, those  
10 prices were grossly inflated. The \$2 billion --

11           HON. REENA RAGGI: I understand this.  
12 I read the indictment. But what's confusing to  
13 me is, I thought from the indictment that the  
14 money was loaned to Mozambique by the two  
15 unidentified investment banks, who then created  
16 securities that were offered to the American  
17 public. Is that not right?

18           MR. BINI: It is, with respect to  
19 EMATUM, which is a security, and the loan  
20 participation notes.

21           HON. REENA RAGGI: I'm just interested  
22 in what --

23           MR. BINI: Yes.

24           HON. REENA RAGGI: -- we sold to US  
25 investors, because that's the only basis for your

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1 bringing this charge in the United States, right?

2 MR. BINI: Well, yes and no, as we also  
3 set out, all of these loan agreements required  
4 that the money be paid from and to bank accounts  
5 in New York City.

6 HON. REENA RAGGI: We'll get to that in  
7 a minute.

8 MR. BINI: And you have the investors -  
9 -

10 HON. REENA RAGGI: We'll get to that in  
11 a minute.

12 MR. BINI: Okay, yes.

13 HON. REENA RAGGI: I want you to answer  
14 my question. To the extent that the US investors  
15 were putting up their money, who did that money  
16 go to? I don't -- I didn't understand that their  
17 money went to the Government in Mozambique, it  
18 went to whoever loaned the money to the  
19 Government in Mozambique, right?

20 MR. BINI: It went to -- oftentimes, it  
21 went to the New York City bank account to be  
22 distributed to the -- to actually to the employer  
23 for this Defendant, Mr. Boustani, Privinvest. So  
24 the money went to the bank, and then the bank  
25 gave it directly to Privinvest, which was to --

1 HON. REENA RAGGI: Is Privinvest the  
2 issuer of the security?

3 MR. BINI: No, the issuer is --

4 HON. REENA RAGGI: You've got a lengthy  
5 indictment here. I don't understand what the  
6 security is or what the fraudulent statement is.  
7 So there's pages and pages about what went on in  
8 Mozambique, and you don't tell us what the  
9 fraudulent security is. I don't think you'd  
10 satisfy this if this were a civil complaint on  
11 what the fraud is in the instrument.

12 But that -- I think I've gotten enough  
13 to get a sense of what your case is. You're not  
14 trying it here after all. But with respect to  
15 the money moving through US accounts, how did the  
16 money moving through US accounts contribute to  
17 the laundering or the fraud?

18 I mean, I thought it was coincidental,  
19 and that under our case law, that wouldn't be  
20 enough to give you jurisdiction in the United  
21 States. What are you going to rest it on?

22 MR. BINI: Your Honor, among other  
23 things, first of all, these are conspiracy  
24 counts, and the investors were hundreds of  
25 millions of dollars, the investments were sold

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1 into the United States. And those money went  
2 through, again, bank accounts in New York --

3 HON. REENA RAGGI: Now I'm dealing with  
4 the transactions --

5 MR. BINI: Yes.

6 HON. REENA RAGGI: -- that don't  
7 involve the investors, but that involve the money  
8 moving among the confederates, which you, in your  
9 indictment highlight, went through US bank,  
10 clearing banks. And what's the case that allows  
11 you to say that the fact that that money went  
12 through US clearing banks is enough to give you  
13 jurisdiction here in the United States?

14 MR. BINI: The name escapes me, but I  
15 know that there's the case where there's a  
16 Southern District of New York case, where the  
17 drug dealers are driving across the Goethals  
18 Bridge. And the communication in furtherance of  
19 the conspiracy in the -- over the territorial  
20 waters conveyed jurisdiction in the Southern  
21 District of New York.

22 HON. REENA RAGGI: (indiscernible) bank  
23 clearing. And that -- I mean, I assumed, since  
24 this is the whole theory of your case, that  
25 you've got legal support for this being enough to



1 give you a hook in the United States --

2 MR. BINI: Yes, Your Honor. And the  
3 wires did pass through the Eastern District of  
4 New York in going to those correspondent bank  
5 accounts. And since the wires passed through, as  
6 part of this, and frankly, these were all  
7 denominated in US dollar accounts. So this was  
8 always conceived of and known by the co-  
9 defendants that this in fact would occur.

10 HON. REENA RAGGI: I suspect you'll  
11 have some interesting litigation on all of this.  
12 I don't want to hold you any more on bail --

13 HON. SUSAN L. CARNEY: Let me ask just  
14 -- let me just ask one, maybe -- so I just wanted  
15 to make sure I understand. Is it the  
16 Government's position that there is no bail  
17 package or condition of confinement package that  
18 the Defendant can offer that would provide  
19 reasonable assurance that he will appear in  
20 Court? None? So there's no point in Mr. Jackson  
21 going back to the District Court? Is that your  
22 position?

23 MR. BINI: The Government's position is  
24 is that there is no set of conditions that would  
25 reasonably assure his appearance. However, the